



# REQUEST FOR PROPOSALS

## City of Hampton

ISSUING OFFICE:

Consolidated Procurement Div.  
1 Franklin Street, Suite 345  
HAMPTON, VA 23669  
TELEPHONE: (757) 727-2200  
FAX: (757) 727-2207

**DATE: February 16, 2016**

Attention of Offeror is Directed To Section  
2.2-4367 to 2.2-4377 Code of Virginia  
(Ethics In Public Contracting)

**SEALED PROPOSALS** will be received in the Issuing Office above until Closing Date and Closing Time as specified in this solicitation including any addenda issued by this office. HCS of Hampton is not responsible for late delivery by U.S. Postal mail or other couriers. All inquiries for information regarding this Request for Proposal are to be directed to the Issuing Office as defined herein.

**COMMODITY: ANNUAL NEEDS FOR SCIENCE SUPPLIES AND EQUIPMENT NIGP CODE: 938.81**

PLEASE FILL IN OFFEROR'S NAME & ADDRESS  
IN THE SPACES PROVIDED BELOW:

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**THIS IS NOT AN ORDER**

<b>RFP ITEM NO.</b> 16-357767/CGA
<b>PROCUREMENT OFFICER</b> <b>Carol G. Alston</b> WAE Senior Buyer
<b>CLOSING DATE</b> March 10, 2016
<b>CLOSING TIME</b> 2:00 PM
<b>PREPROPOSAL CONFERENCE</b> NONMANDATORY <b>DATE: N/A</b> <b>TIME:</b>

THE SCHOOL BOARD OF THE CITY OF HAMPTON, HEREAFTER REFERRED TO AS "HCS", RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL PROPOSALS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITIES IN THE COMPETITIVE NEGOTIATIONS PROCESS. FURTHER, HCS RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN ITS BEST INTEREST. THE ENTIRE CONTENTS OF THE REQUEST FOR PROPOSALS, ANY ADDENDA, OFFEROR'S PROPOSAL AND NEGOTIATED CHANGES SHALL BE INCORPORATED BY REFERENCE INTO ANY RESULTING CONTRACT.

**THE SCHOOL BOARD OF THE CITY OF HAMPTON DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.**

Annual Needs for Science Supplies and Equipment

The School Board of The City of Hampton is seeking proposals from qualified Offerors to provide annual needs for science supplies and equipment .

**ACKNOWLEDGE RECEIPT OF ADDENDUM: #1\_\_\_\_ #2\_\_\_\_ #3\_\_\_\_ #4\_\_\_\_ (Please Initial)**

THE SCHOOL BOARD OF THE CITY OF HAMPTON CANNOT LEGALLY AGREE TO ANY CLAUSE INDEMNIFYING THE CONTRACTOR FROM ANY DAMAGES ARISING OUT OF THE CONTRACT/AGREEMENT/LEASE OR HOLDING THE CONTRACTOR HARMLESS. THE SUBMISSION OF A PROPOSAL CONSTITUTES AN AGREEMENT BY THE CONTRACTOR NOT TO REQUEST SUCH LANGUAGE IN THE RESULTING CONTRACT. IN COMPLIANCE WITH THIS SOLICITATION AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO PERFORM ANY CONTRACT AWARDED AS A RESULT OF THIS SOLICITATION. THE FOLLOWING SECTION SHALL BE SIGNED BY AN AGENT AUTHORIZED TO BIND THE COMPANY. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN PROPOSAL REJECTION.

Authorized Agent:

Email Address

ENCLOSURES

Signature

Telephone Number

Fax Number

Type or Print Name

Company FEI/FIN#

## **ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS**

### **ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID OFFEROR DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED OFFEROR HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, CITY HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS PROPOSAL.

### **DRUG-FREE WORKPLACE:**

DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE CONTRACTOR'S EMPLOYEES; (II) POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE OR MARIJUANA IS PROHIBITED IN THE CONTRACTOR'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE CONTRACTOR THAT THE CONTRACTOR MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A CONTRACTOR IN ACCORDANCE WITH FEDERAL LAW, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

### **EMPLOYMENT DISCRIMINATION BY THE SUCCESSFUL OFFEROR SHALL BE PROHIBITED:**

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:
  - a. THE OFFEROR, SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE CONTRACTOR. THE CONTRACTOR AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
  - b. THE CONTRACTOR, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE CONTRACTOR, SHALL STATE THAT SUCH CONTRACTOR IS AN EQUAL OPPORTUNITY EMPLOYER.
  - c. NOTICES, ADVERTISEMENTS, AND SOLICITATIONS PLACED IN ACCORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.
2. THE CONTRACTOR WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

**Name and Address of OFFEROR:**

Date: \_\_\_\_\_ Authorized Signature \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Federal Tax Identification Number/Social Security Number:** \_\_\_\_\_

Is Offeror a "minority" business? ☐ Yes ☐ No

☐ African American ☐ Hispanic American

Is Offeror Woman Owned? ☐ Yes ☐ No

Is Offeror a Small Business? ☐ Yes ☐ No

Is Offeror a Faith-Based Organization? ☐ Yes ☐ No

If yes, please indicate the "minority" classification below:

☐ American Indian ☐ Eskimo ☐ Asian American ☐ Aleut ☐ Other; Please Explain:

## **I. PURPOSE**

The purpose of this RFP is to solicit sealed proposals from qualified offerors to provide HCS with annual needs for science supplies and equipment listed in vendor's catalog on an as needed basis.

## **II. BACKGROUND**

### **Hampton, Virginia**

Hampton is an independent city located in Virginia. It is on the southern end of the Virginia Peninsula, bordering on Hampton Roads and Chesapeake Bay. According to the United States Census Bureau, HCS has a total area of 136.2 mi; 51.8 mi of it is land and 84.4 mi of it is water, with a total population of 146,437.

HCS boasts a strong military and technology presence. Langley Air Force Base is home of the First Fighter Wing. NASA Langley Research Center, where America's first astronauts were trained, is now a major center for aviation research. Technology centers of employment include companies such as Sverdrup, Howmet Corporation, Computer Sciences Corporation and Nextel Communications. Hampton is also home to Hampton University and Thomas Nelson Community College.

Hampton is served by two airports. The primary airport for the Hampton Roads area is Norfolk International Airport, on the opposite side of Hampton Roads in Norfolk. The region's secondary airport, Newport News/Williamsburg International Airport, is located on the Virginia Peninsula in Newport News.

Hampton is part of a dynamic metropolitan region. Besides Hampton, the region contains 5 other cities with a population greater than 100,000. The region now has a population of more than 1.5 million and grew at a 1.17% annual rate from 1990 to 2000. Hampton Roads is the 31st largest MSA in the nation. Its effective buying power (EBI) according to Sales, Marketing and Management is more than \$20.8 billion.

Demographically, Hampton is in many ways typical of metropolitan America. It contains within its boundaries an urban core, a ring of older, settled neighborhoods and newer suburban development. Its citizens' age, educational, occupational and socio-economic characteristics by and large reflect the typical American demographic profile. HCS's demographic data may be accessed via the hyperlink below:

[Population and Income Updates](#)

### **Hampton City Schools**

Based on the Commonwealth of Virginia Department of Education's (DOE) 2004-2005 Fall Membership Report, Hampton City Schools (HCS) is the thirteenth largest school division in the Commonwealth with approximately 22,799 students. HCS is an urban school system educating children in 24 Elementary (includes 1 magnet & 3 fundamental schools), 6 Middle Schools (includes 1 fundamental school and 1 magnet school), 4 High Schools, 1 Charter School, 1 Elementary Gifted Magnet School, 1 Early Childhood Center. A listing of HCS and its locations may be accessed via HCS' official web site at <http://www.sbo.hampton.k12.va.us/>

The School Board of HCS of Hampton is seeking proposals for science supplies and equipment.

In its offer, Offeror must provide a firm-fixed price for each item listed below. Offerors must also provide its Virginia Class A Contractors License. descriptive literature, as described in the Descriptive Literature paragraph of this solicitation and include, not only, a record of Offeror's experience in providing comparable services, but also states Bidder's acknowledgement that the product and services offered will be in accordance with the provisions of the RFP. HCS reserves the right to split the award of this RFP should it be determined by HCS, in its sole discretion, to be in the HCS' best interest as outlined in paragraph DD.

### III. SCOPE OF WORK

#### A. General Requirements:

HCS is seeking proposals for annual needs science supplies and equipment .

#### B. Specific Requirements:

1. HCS requires that the Contractor follow certain business practices in order to successfully compete for this contract:
  - 1.1.1. Contractor shall perform services to the highest standards in the science supplies and equipment industry.
2. Award will be based on discount off for the listed in catalog.
3. Inside Deliver ( School list is attached).
4. Firm fixed price for term of the contract.
5. Number of calendar days to deliver after receipt of order.
6. Free Shipping.

#### C. SPECIAL Definitions:

Issuing Office:

Wherever used in this Invitation to Bid, Issuing Office will be:

Carol G. Alston, WAE Senior Buyer  
Consolidated Procurement Division  
Community, Municipal Services/Education  
1 Franklin Street, Suite 345  
Hampton, VA 23669  
Phone: (757) 727-2204  
Fax: (757) 727-2207

Email: cgalston@hampton.gov

School Board of the City of Hampton Contract Administrator:

Wherever used in this Invitation to Bid and for purposes of any notices under this contract, HCS Contract Administrator will be:

Venicia Ferrel, Director of Science Department  
1 Franklin Street  
Hampton, VA 23669  
757 727- 2470(Phone)

### IV. INSTRUCTIONS TO THE OFFEROR

#### A. Contact with City/HCS Staff, Representatives, and/or Agents:

Direct contact with HCS staff, representatives, and/or agents other than Consolidated Procurement Division staff on the subject of this RFP or any subject related to this RFP is expressly prohibited except with the prior knowledge and permission of the Purchasing Agent or designated representative.

#### B. Offerors of Record:

Offerors receiving a copy of this RFP from a source other than the Issuing Office, must contact the Issuing Office and provide Offeror's name, address, contact person, telephone and fax number, and the RFP Item Number. Offeror will be added to HCS's Planholders' list and will receive notification of any addenda to the RFP.

#### C. Questions:

Offerors must submit questions regarding the Request For Proposal in writing to the Issuing Office at (757) 727-2207 or email to [cgalston@hampton.gov](mailto:cgalston@hampton.gov) **no later than 4:30 PM EST February 29, 2016** Necessary replies will be issued to all Offerors of record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the Proposal documents.

Offeror is responsible for checking the <http://www.hampton/bids-contracts> web site or contacting the Issuing Office within 48 hours prior to Proposal closing to secure any addenda issued for this RFP.

**D. Changes or Modifications:**

Changes or modifications to this Request for Proposals made prior to the date and time of closing will be addressed by addenda from the Issuing Office. Offerors are to acknowledge receipt of addenda in the space provided on the cover page of this Request for Proposal. Oral communications are not a part of the Proposal documents. This RFP and any addenda shall be incorporated, by reference, into any resulting contract

**E. RFP Closing:**

Offeror shall ensure its Proposal is time stamped by the Issuing Office no later than the Closing Date and Time shown on the cover page of this Information for Proposal. Proposals received after the specified date and time (time stamped 2:01 P.M. or later) will not be considered and will be returned to the Offeror unopened.

**F. Proposal Submittal Requirements**

1. Each Proposal submission shall be submitted to the Issuing Office and shall include the following documents:
  - a. The cover page of this Request for Proposal, which will contain:
    - 1) Original signature of an agent authorized to bind the company;
    - 2) Requested contact information;
    - 3) Company FEI/FIN number; and,
    - 4) Acknowledgment of any addenda on page one (1);
  - b. Pricing Schedule-Attachment A
  - c. Completed and signed anticollusion/nondiscrimination clauses on page 2;
2. Offerors are encouraged to submit their Proposals on recycled paper and to use double-sided copying.
3. Proposals must be submitted utilizing the following requirements:
  - a. Offerors shall submit proposals in a sealed envelope or package, and label the envelope or package with the Request for Proposal's item number and the name and address of the Offeror. **Proposals received by telephone, telegraph, facsimile, or any other means of electronic transfer shall not be accepted.**
  - b. Submit the original and one (1) copies of the proposal.
  - c. All proposals shall be received and time stamped in the Issuing Office no later than the Closing Date and Time shown on the cover page of this Request for Proposal. Any proposal received after the specified date and time (2:01 PM EST or later) will not be considered and will be returned to the Offeror unopened.
  - d. Proposals must include all elements noted in the "Preparation of Proposals" section below.
  - e. Include a statement setting forth the basis for protection of proprietary information, if any, as detailed in the "Proprietary Information/Disclosure" section.

**G. Cost of Responding:**

This solicitation does not commit HCS to pay any costs incurred by the Offeror or any other party in the preparation and/or submission of proposals or in making necessary studies or designs for the preparation thereof, nor is HCS obligated to procure or contract for such services.

**I. GENERAL TERMS AND CONDITIONS**

**A. Contract Document:**

This RFP, its addenda, Contractor's proposal, any additional information requested, and negotiated changes and will constitute the final contract hereafter referred to as this "contract". These documents will be incorporated by reference into HCS purchase order awarding this contract. This contract shall be governed by the contract documents in the following order of precedence:

This RFP document;

Any negotiated changes to the foregoing documents; and Offeror's proposal

**B. Proposal Binding For One-hundred Twenty (120) Days:**

Offeror agrees that its Proposal shall be binding and may not be withdrawn for a period of one-hundred (120) calendar days after the scheduled closing date of this Request For Proposals.

**C. Proprietary Information/Non-Disclosure:**

Offeror is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Offeror shall:

1. Invoke the protections of this section prior to or upon submission of the data or other materials,
2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
3. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "**PROPRIETARY**".
4. Information submitted that does not meet the above requirements will be considered public information in accordance with State statutes.
5. HCS reserves the right to submit such information to HCS attorney for concurrence of the Offeror's claim that it is in fact proprietary.
6. References to the proprietary information may be made within the body of the Proposal; however, all information contained within the body of the Proposal shall be public information in accordance with State statutes.
7. Trade secrets or proprietary information submitted by an Offeror in conjunction with this RFP is not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA).
8. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
9. An all-inclusive statement that the entire Proposal is proprietary is unacceptable. A statement that Offeror's costs and/or Proposal pricing are to be protected is unacceptable. Offeror will be requested to remove any such statement(s) in order to be eligible for further consideration.

**D. Contract Modification(s):**

After award, any and all modifications to this contract shall be mutually agreed to by both parties, in writing, and authorized by HCS Purchasing Agent or his designee via issuance of a change order (purchase order).

**E. Offeror Obligation:**

Offeror shall carefully examine the contents of this Request for Proposals and any subsequent addenda. Failure to do so shall not relieve the Contractor of its obligation to fulfill the requirements of any contract awarded as a result of this RFP.

**F. Conditions of Work:**

Offeror shall inform itself fully of the conditions relating to services required herein. Failure to do so will not relieve a Contractor of the obligation to furnish all goods and/or services necessary to carry out the provisions of this contract.

**G. Prime Contractor:**

If in its performance of this contract, Contractor supplies goods or services by or through another party or subcontractor, Contractor agrees that:

1. Contractor shall act as the prime contractor for the goods and services to be provided under contract and shall be the sole point of contact with regard to all obligations under this contract.
2. Contractor represents and warrants that Contractor has made third parties or subcontractors aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection and that HCS is not liable to such third parties or subcontractors for any work performed under this contract.
3. The use of subcontractors and the work they perform must receive the prior written approval of HCS. HCS will designate a Contract Administrator to approve such work.
4. Contractor shall be solely responsible for all work performed and materials provided by subcontractors.
5. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor under this contract.

6. To obtain payment for work performed under this Agreement, if the Contractor is an individual, the individual Contractor shall provide his social security number. If the Contractor is a proprietorship, partnership, or corporation, the Contractor shall provide its federal employer identification number.

**H. Subcontractors:**

Contractor's use of subcontractors and the work they are to perform must receive written approval from the Contract Administrator at least ten (10) calendar days prior to the work being performed. Contractor shall be solely responsible for all work performed and materials provided by subcontractors. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.

Payments to Subcontractors:

In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt of payment from the HCS; or, shall notify the HCS and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided in the Agreement, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the HSC. An Agreement modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

**I. Non-Assignment:**

Contractor shall not assign its rights and duties under this Agreement without the prior written consent of HCS Contract Administrator.

**J. Antitrust:**

Any perceived anti-trust violation will be reported to the State Attorney General for possible enforcement of anti-trust laws.

**K. Anticollusion/Nondiscrimination Requirements Form:**

The attached "Anticollusion/Nondiscrimination Requirements" form, on page 2 of this RFP, shall be executed by Offeror and is to be submitted with Offeror's Proposal. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this RFP. A contract will not be awarded to an Offeror who has not signed the anticollusion/nondiscrimination statement.

**L. Hold Harmless/Indemnification:**

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all material damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Contractor agrees to indemnify and hold harmless HCS and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Contractor or those for whom Contractor is legally liable. Upon written demand by HCS, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against HCS, its agents, volunteers, servants, employees or officials.

**M. Notices:**

All notices, requests, demands, and elections under this contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) HCSbusiness days after the date of mailing when mailed by United States mail, certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

To HCS Contract Administrator as designated in this RFP.

To Contractor: Contractor's Contract Administrator as defined in Contractor's Proposal.

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

#### **N. Non-Performance:**

1. **Delivery Delays:** HCS reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Contractor fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract.
2. **Unacceptable Deliveries (Rejections):** Upon notification by HCS that goods and/or service deliverables provided by the Contractor under this contract are damaged and/or not of the quality specified by HCS, such goods and/or service deliverables will be rejected. Contractor shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by HCS.
3. Contractor shall remove all rejected materials, equipment or supplies from the premises of HCS within ten (10) days of notification. Rejected goods and/or service deliverables not removed from HCS's premises within ten (10) days will be regarded as abandoned, shall become the property of HCS, and HCS shall have the right to dispose of such items.
4. HCS reserves the right to authorize immediate purchase from other sources against rejections.
5. **Liability:** Contractor shall be liable to HCS for all costs incurred by HCS as a result of Contractor's failure to perform in accordance with the contract. Contractor's liability shall include, but not be limited to:
  - a. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
  - b. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Contractor and/or rejections of Contractor's goods and/or service deliverables.
  - c. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by HCS due to non-responsive performance of Contractor.

#### **O. Termination Without Cause:**

HCS may at any time, and for any reason, terminate this Contract by written notice to Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested, addressed to the Contractor's Contract Administrator. In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by HCS, at the time of termination. In the event HCS terminates this Contract, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to HCS any work completed or in process for which payment has been made.

#### **P. Termination With Cause/Breach:**

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Contract, HCS may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, HCS may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to HCS any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by HCS and provisions herein with respect to opportunity to cure default shall not be applicable. This contract may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this



contract, if that other party has failed to cure that failure or breach within ten (10) days after receipt of written notice thereof from the other party.

**Q. Breach of Contract:**

Contractor shall be deemed in breach of this contract if the Contractor:

Fails to comply with any terms of this contract;

Fails to cure such noncompliance within ten (10) calendar days from the date of HCS's written notice or such other time frame, greater than ten (10) calendar days, specified by HCS Contract Administrator in the notice.

Fails to submit a written response to HCS's notification of noncompliance within ten (10) calendar days after the date of HCS notice.

All notices under this contract shall be submitted, either by fax or certified mail, return-receipt requested, to the respective contract administrator. Contractor shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of HCS in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

**R. Applicable Law:**

This Contract shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

**S. Compliance With All Laws:**

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of this contract. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and/or will acquire any additional licenses and permits necessary for performance of this contract prior to the initiation of work. If the Contractor is a corporation, Contractor further expressly represents that it is a corporation of good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the contract and any extensions. All City of Hampton business license, personal property, real estate and other applicable tax requirements shall be met by Contractor.

**T. Immigration Reform and Control Act of 1986**

Contractor/Vendor does not and shall not during the performance of the Contract knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**U. Venue:**

Venue shall be in the Circuit Court of City of Hampton, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by City of Hampton. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, **or the United States District Court for the Eastern District of Virginia, Norfolk Division.**

**V. Severability:**

If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in full force and effect.

**W. Non-Appropriation of Funds:**

It is understood and agreed between the parties herein that HCS shall be bound hereunder only to the extent that the funds shall have been appropriated. In the event no funds or insufficient funds are appropriated, HCS shall immediately notify the Contractor of such occurrence and this Contract shall terminate on the last day funds are available without penalty or expense to HCS of any kind whatsoever.

**X. Tax Exemption:**

HCS is exempt from federal excise tax and from all State and local taxes. Contractor shall not include such taxes in any invoices under this agreement. Upon request, HCS will furnish the Contractor with tax exemption certificates or HCS tax exempt number.

**Y. Vendor's Invoices:**

Contractor shall submit to HCS all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the Products and Services required under this contract. Invoices shall not include any costs other than those identified in the executed City purchase order awarding this contract or any subsequent change orders issued by the Consolidated Purchasing Division. All shipping costs are the Contractor's responsibility, except to the extent such charges are identified in the executed City purchase order or change orders. Contractor's invoices shall provide at a minimum:

Type and description of the Product or Service installed, delivered and accepted;

Serial numbers, if any;

Quantity delivered;

Charge for each item;

Extended total (unit costs x quantity);

This RFP number and HCS Purchase Order Number.

**Z. Contractual Disputes:**

Any dispute concerning a question of fact as a result of a contract with HCS which is not disposed of by agreement shall be decided by HCS Purchasing Agent or designee, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of HCS Purchasing Agent or designee shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**AA. Warranty/Guarantee:**

Contractor guarantees against defective or faulty material or workmanship for at least one (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by HCS. To furnish adequate protection from damage for all work and to repair damages of any kind for which Contractor or Contractor's workmen are responsible, to the building or equipment, to Contractor's own work, or to the work of others. Any merchandise or service provided under the contract which is or becomes defective during the warranty period shall be replaced by the Contractor free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). Contractor shall make any such replacement immediately upon receiving notice from HCS.

**BB. Payment Terms:**

To be eligible for payment, all labor, equipment and materials covered under Contractor's invoice must be completed and accepted by HCS. HCS agrees to make payments under this contract within thirty (30) days after receipt of a correct invoice for such payment. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due HCS under the terms of this or any other agreement may be applied against Contractor's invoices with documentation for the basis of the adjustment attached. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between HCS and Contractor regarding the quantity, quality, time of delivery, or other noncompliance with the contract requirements for any Product or Service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of 20 days or greater will be considered in the evaluation of Proposals. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Offeror shall be Net 45 days.

Special Educational or Promotional Discounts

Contractor shall extend any special educational or promotional sale prices or discounts immediately to HCS during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

**CC. Audits:**

HCS shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three years following the completion of this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to HCS, through its employees, agents, representatives, contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton, Virginia, which is convenient for HCS. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which HCS may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

**DD. Notice of Award:**

Any contract resulting from this RFP will be publicly posted for inspection in the Consolidated Procurement Division, 1 Franklin Street, Suite 345, Hampton, Virginia.

**EE. Award:**

HCS intends to award a contract to a fully qualified Offeror submitting the best catalog discount as determined by HCS in its sole discretion. At HCS's sole discretion, HCS may reject any or all proposals in whole or in part if such action is determined to be in HCS's best interest. HCS reserves the right to enter into any contract deemed to be in its best interest, including the award of this contract to more than one contractor.

**FF. Disposition of Proposals:**

All materials submitted in response to this RFP will become the property of HCS. One (1) copy of each proposal will be retained for official files, will become a matter of public record after award of the contract, and will be open to public inspection subject to the **Proprietary Information/Disclosure** section of this RFP.

**GG. Non-Exclusivity:**

HCS reserves the right to procure goods or services covered under this contract from a third party when, in HCS's sole discretion; it is deemed to be in HCS's best interest.

**II. SPECIAL TERMS AND CONDITIONS**

**A. Contract Term:**

This contract term shall be for one (1) year.

**B. Contract Extension:**

This contract may be extended upon mutual agreement of both parties for four (4) additional, one-year periods, upon the same prices, terms, and conditions set forth in the negotiated contract resulting from this RFP.

**C. Time is of the Essence:**

Time is of the essence in this Contract. Contractor expressly acknowledges that in the performance of its obligations, HCS is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance.

**D. Insurance:**

Contractor shall submit to HCS Contract Administrator Certificates of Insurance, prior to beginning work under this contract and no later than ten (10) days after award of the contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to HCS, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to HCS.

The certificates of insurance shall list the School Board of HCS of Hampton, 1 Franklin Street, Suite 345, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this RFP.

Insurance shall be maintained during the entire term of the contract and any extensions and shall be of the following forms and limits:

Forms	Limits
Workers' Compensation	Statutory
Automobile Liability	\$1,000,000 Combined Single Limit
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit
Umbrella/Excess Liability	\$2,000,000

The establishment of minimum limits of insurance by the School Board of HCS of Hampton does not reduce or limit the liability or responsibilities of the Contractor.

The establishment of minimum limits of insurance by the HCS does not reduce or limit the liability or responsibilities of the Contractor.

The endorsement would be that which is attached to the policy that acknowledges the HCS as an also insured on all policies we have required to be endorsed.

This will be either a direct endorsement that actually names the HCS or a blanket endorsement that contract states that the HCS will be named as an also insured on the insurance policy.

**Contractor shall provide the HCS with its social security number or federal taxpayer identification number prior to receiving any payments for services under this Contract.**

#### **E. Unauthorized Disclosure of Information:**

Contractor shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with this contract. The Contractor shall save harmless and indemnify HCS and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Contractor shall, upon written demand by HCS, assume and defend, at the Contractor's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

Any negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with this contract shall constitute a breach of the terms of this contract. HCS may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Contractor shall save harmless and indemnify HCS for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

#### **F. Copyright/Patent Indemnity:**

Contractor shall pay all royalty and license fees relating to the items covered by this contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this contract constitute an infringement of any copyright, trademark, or patent, the Contractor shall indemnify HCS and hold HCS harmless from any cost, expense, damage or loss incurred in any manner by HCS on account of any such alleged or actual infringement.

#### **G. Cooperative Procurement**

Section 2.2-4304 Code of Virginia (VPPA) will apply to this solicitation. Other Public Bodies may utilize any contract(s) issued pursuant to this solicitation by placing its own order(s) directly with the Contractor(s). HCS of Hampton acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies.

#### **H. Criminal Background Check Requirements**

Provider shall certify on Attachment B that all employees employed in support of this Contract who have direct contact with students, which is defined to mean being in the presence of students during regular school hours of during school-sponsored activities, have not been convicted of (i) a felony; or (ii) any offense involving the sexual molestation, physical or sexual abuse or rape of a child.

### **FOREIGN AND DOMESTIC BUSINESSES-AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH**

Contractor whether organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity and shall provide proof thereof. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Agreement. Failure by the Contractor to remain in compliance with the provisions of this section shall be deemed a material breach of this Agreement.

### **CITY OF HAMPTON, VIRGINIA and HAMPTON CITY PUBLIC SCHOOLS INSTRUCTIONS AND INFORMATION ON COMPLYING WITH CITY INSURANCE REQUIREMENTS**

This information is to assist the contractor to understand the insurance requirements of the City of Hampton (City) and Hampton City Public Schools (HCS). Contractors are encouraged to share this information with insurance agents and brokers. **In all cases the RFP or IFP requirements override statements in this document.**

**1. Agreement/Reference.** All evidence of insurance must identify the nature of your business with the CITY/HCS. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your insurance is properly assigned to the correct project. It is important that you **provide the types of coverage and minimum dollar amounts specified in the RFP or RFB document.** **Failure to provide the requested amounts may lead to disqualification and increase processing time.**

**2. When to submit.** Normally no work may begin until the certificate of insurance (COI) with proper endorsement has been received. It is important that the certificate and endorsement be provided as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

**3. Acceptable Evidence and Approval.** Proof of insurance is normally provided on an industry form known as the ACORD Certificate of Insurance. Insurance industry certificates other than the ACORD may be accepted after review. In addition to the ACORD form, an Insured Endorsement naming the CITY or HCS as an additional insured that has been completed by your insurance company or its designee must be attached to the COI. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured and the substantiating endorsement must be attached. Attaching the section of the insurance policy covering contractual additional insureds may be used until the actual endorsement is received.

All evidence of insurance must be authorized for the insurance provider by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

#### **Acceptable Alternatives to ACORD Certificates and other Insurance Certificates:**

- **A copy of the full insurance policy.**
- **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days from date of approval.
- **Self-Insured** contractors or vendors must submit for review to the Risk Manager documentation of its financial ability to self-insure for each coverage required. (See Para 6 below.)

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law
- Professional Liability insurance

4. **Renewal.** Upon renewal of any insurance policy it is the responsibility of the contractor to provide the updated ACORD Certificate of Insurance or other acceptable documentation to the City or HCS. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.

5. **Cancellation.** The contractor/vendor must inform the City/HCS 30 days before insurance is cancelled or not renewed. The requirement for the insurance company to inform the additional insureds is not enforceable. Failure to inform must be considered a substantive violation of the contract and could result in the contract being cancelled.

6. **Alternative Programs/Self-Insurance.** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY Risk Manager has reviewed the relevant documents. Any contractor or vendor that wishes to satisfy insurance requirements as a self-insured party must receive permission from the Risk manager by submitting a request to the Risk Management Department.

7. **General Liability.** General liability insurance covering your operations (and products, where applicable) is required whenever the CITY or HCS is at risk of:

- **Third-party claims** which may arise out of your work or your presence or special event on city premises.
- **Sexual misconduct claims coverage** is a required coverage when the work performed involves minors.
- **Fire legal liability insurance** is required for persons occupying a portion of CITY or HCS premises.

8. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY or HCS premises; it is not required for simple commuting unless CITY or HCS is paying mileage. However, compliance with Virginia law requiring auto liability insurance is a contractual requirement.

9. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

10. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law the minimum coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement that can be obtained from Risk Management.

**A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

11. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY.

12. **Builder's Risk/Course of Construction** is insurance coverage that protects the owner's interests in the structure as well as materials, fixtures and/or equipment being used in the construction or renovation of a building or structure should those items sustain physical loss or damage from a covered cause. It is required during construction projects and must include building materials in transit and stored at or away from the project site. This would also include materials purchased by the City for installation or erection by the contractor.

13. **Surety or Bond** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Fidelity Bond may be required to handle CITY funds or securities, and under certain other conditions. Specialty coverages may be needed for certain operations as outlined in the RFP or RFB

ATTACHMENT A:

**FIRM FIXED PRICE FOR THE TERM OF THE CONTRACT.  
FREE SHIPPING.**

DISCOUNT AMOUNT \_\_\_\_\_

NUMBER OF CALENDAR DAYS TO SHIP ORDER AFTER RECEIPT OF REQUEST \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

RFP 16-357767/CGA Page 15 of 24

**A withdrawal of bid due to error shall be in accordance with Section 2.2-4330 B (1) of the Code of Virginia.** The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after conclusion of the bid opening procedure and shall submit original work papers with such notice.

Hampton City Schools does not discriminate on the basis of race, color, national origin, sex, disability, age or other protected classes in its programs, activities and employment practices and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the non-discrimination policies: Robbin A. Ruth, Executive Director of Human Resources, One Franklin Street, Hampton, Virginia 23669 757-727-2318.



**ATTACHMENT B:**

**PROCUREMENT OFFICE  
Community Municipal Services/Education**

**THE SCHOOL BOARD FOR THE CITY OF HAMPTON  
DOES NOT DISCRIMINATE  
AGAINST FAITH BASED ORGANIZATIONS.**

**ARTICLE I – IDENTIFICATION OF PARTIES**

This Agreement, made in triplicate on this \_\_\_\_\_, day of \_\_, 2012, by and between the School Board of the City of Hampton, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the (“School Board”) and, \_\_\_\_\_ a \_\_\_\_\_ corporation having a place of business at, \_\_\_\_\_ hereinafter referred to as the (“Contractor”).

It is mutually understood and agreed by the parties hereto that the entire contents of RFP # \_\_\_\_\_, Conditions of Contract (General, Special, and other conditions as they may be titled) Intent to Award Letter, dated \_\_\_\_\_; (Exhibits “A”) and Contractor’s Response for Proposal dated \_\_\_\_\_; (Exhibit “B”) are incorporated herein by reference the same if each had been fully set out and attached hereto.

Witnesseth, that the Contractor and the School Board, in consideration of the mutual covenants contained herein with respect to the performance of professional services by the Contractor and the payment for those services by the School Board, the School Board and Contractor agree as set forth below:

**ARTICLE II – SCOPE OF SERVICES**

The Contractor shall perform services to the School Board in accordance with the highest standards held for \_\_\_\_\_ on a project-by-project basis. Each agreement shall reference a detailed scope of work for that specific project and include a fixed fee and completion date as specified in certain RFP # \_\_\_\_\_ and dated \_\_\_\_\_. In the event that a conflict exists between the referenced proposal of Consultant dated \_\_\_\_\_, and the terms of this Agreement, the terms of this Agreement shall govern and supersede any such conflicting terms of the proposal.

**ARTICLE III – PAYMENT FOR SCOPE OF SERVICES**

In consideration of the work to be performed by Contractor, as set forth under Article II entitled Scope of Services, the School Board agrees to pay Contractor in accordance with the schedule of fees as specified in and attached hereto as Exhibit “C” as specified in the above referenced Contractor’s Response for Proposal dated \_\_\_\_\_

To obtain payment for work performed under this Agreement, if the Contractor is an individual, the individual Contractor shall provide his social security number. If the Contractor is a proprietorship, partnership, or corporation, the Contractor shall provide its federal employer identification number.

**ARTICLE IV – TIME COMPLETION**

- A. This Agreement shall commence on the date set forth in Article I herein, and shall continue in force for \_\_\_\_\_ years with \_\_\_\_\_ ( ) additional, one year periods.
- B. Time is of the essence in this Agreement. Contractor expressly acknowledges that in the performance of its obligations, the School Board is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance.

**ARTICLE V - NON-ASSIGNMENT**

Contractor shall not assign its rights and duties under this Agreement without the prior written consent of the School Board.

ARTICLE VI - APPLICABLE LAW/COMPLIANCE WITH ALL LAWS/PROMPT PAYMENT/ VENUE

A. Applicable Law:

This Agreement shall be deemed to be a Virginia Contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

B. Compliance with all Laws:

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Agreement prior to the initiation of work. Contractor does not and shall not during the performance of the Agreement knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

C. Payments to Subcontractors:

In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt of payment from the School Board; or, shall notify the School Board and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided in the Agreement, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the School Board. An Agreement modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

D. Venue:

Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton.

ARTICLE VII - NONDISCRIMINATION

A. Employment discrimination by Contractor shall be prohibited. During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### ARTICLE VIII- DRUG FREE WORKPLACE

A. During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will provide a drug-free workplace for Contractor's employees.
2. Contractor will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
3. Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor vendor.

#### ARTICLE IX - NON-APPROPRIATION - Availability of Funds

It is understood and agreed between the parties hereto that the School Board shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Agreement. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Agreement, the School Board shall immediately notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the School Board of any kind whatsoever.

#### ARTICLE X – TERMINATION OF AGREEMENT

A. Termination without Cause

The School Board may at any time, and for any reason, terminate this Agreement by written notice to Contractor specifying the termination date, which shall be not less than ten (10) days from the date such notice is mailed.

Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Article I of this Agreement.

In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the School Board, at the time of termination.

If the School Board terminates this Agreement, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under this Agreement, and turn over to the School Board any work completed or in process for which payment has been made.

B. Termination with Cause / Default / Cancellation

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Agreement, the School Board may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Agreement.

Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the School Board may immediately cancel and terminate this Agreement as of the mailing date of the default notice.

Upon termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Agreement, and turn over to the School Board any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Agreement may be immediately cancelled and terminated by the School Board and provisions herein with respect to opportunity to cure default shall not be applicable.

#### ARTICLE XI – OWNERSHIP OF DOCUMENTS/FREEDOM OF INFORMATION ACT

Ownership of all materials and documentation including the original drawings and the Plans and Specifications and copies of any calculations and analysis prepared pursuant to the Agreement between the School Board and the Contractor, shall belong exclusively to the School Board. Such materials and documentation, whether completed or not, shall be the property of the School whether the Work for which they are made is executed or not. The Contractor shall not use these materials on any other work or release any information about these materials without the express written consent of the School Board.

Such material may be subject to public inspection in accordance with the Virginia Freedom of Information Act. Security related documents and information are excluded from the Act unless a specific need to know can be shown. Trade secrets or proprietary information submitted by a bidder, offeror, or Contractor in connection with a procurement transaction shall not be subject to disclosure under the Virginia Freedom of Information Act provided the bidder, offeror, or Contractor invokes the protections of §2.2-4342, Code of Virginia, prior to or upon submission of the data or other materials, identifies the data or materials to be protected and states the reason why the protection is necessary.

#### ARTICLE XII – HOLD HARMLESS – INDEMNIFICATION

##### A. Professional Responsibility of Contractor

Contractor agrees, for itself, its agents, servants, employees, subcontractors, and sub-contractors, to perform all work hereunder or associated herewith in accordance with any and all applicable professional standards and in accordance with general industry practice and principles.

As to all matters of professional responsibility, Contractor agrees to indemnify and hold harmless the School Board and its agents, volunteers, servants, employees and officials from and against any and all liability, losses, reasonable attorney's fees and litigation expenses or other expenses suffered by any indemnified part or entity as the result of any claim to the extent it is found to have been caused by the negligent acts, errors, or omissions of Contractor, or those for whom Contractor is legally liable.

With the prior approval of the School Board, Contractor may assume the defense of any such professional liability claim(s) made against the School Board, its agents, volunteers, servants, employees or officials.

##### B. General Responsibility of Contractor

As to all matters of liability related to or arising out of this Agreement other than professional liability, Contractor agrees to indemnify and hold harmless the School Board, its agents, volunteers, servants, employees and officials from and against any and all liability, losses, reasonable attorney's fees and litigation expenses, or other expenses suffered by any indemnified party or entity as a result of any claim to the extent that it is found to have been caused by the acts, errors, or omissions of Contractor or those for whom Contractor is legally liable.

With the prior approval of the School Board, Contractor may assume the defense of any such claim(s) made against the School Board, its agents, volunteers, servants, employees or officials.

### ARTICLE XIII – INSURANCE

Contractor shall submit to the School Board Contract Administrator certificates of insurance with applicable endorsements to the policy attached, prior to beginning work under this Agreement and no later than ten (10) days after award of the Agreement.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the School Board.

The certificate of insurance shall list the School Board of the City of Hampton, 1 Franklin Street, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this RFP. The Endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the School Board as an additional insured on all policies the School Board is made an additional insured. This shall be either a direct Endorsement that actually names the School Board of the City of Hampton or a Blanket Endorsement within the insurance policy that states that under a contractual agreement the School Board will be named as an also insured on the required insurance policy. Insurance shall be primary and the additional insured's primary coverage is non-contributory.

Insurance shall be maintained during the entire term of the Agreement and any extensions and shall be of the following forms and limits:

Forms	limits
workers' compensation	statutory
automobile liability	\$1,000,000 combined single limit
commercial general liability,	\$1,000,000 combined single limit including contractual liability and products and completed operations coverage
umbrella/excess liability	\$2,000,000

The establishment of minimum limits of insurance by the School Board does not reduce or limit the liability or responsibilities of the Contractor.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE SCHOOL BOARD SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE SCHOOL BOARD SHALL CONSTITUTE A MATERIAL BREACH OF THE AGREEMENT.

Should any of the above described policies be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions". The School Board further requires thirty (30) days notice of cancellation must be noted in the policy or in additional insured and alternate employer endorsements. Failure to obtain such notice provisions will Constitute a material breach of this Agreement.

### ARTICLE XIV – EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the School Board and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

### ARTICLE XV - CONTRACTOR'S REIMBURSABLE EXPENSES

1. The Contractor's reimbursable expenses shall not include those incidental expenses such as supplies, utilities, which are a part of normal over head costs.
2. Such expenses shall include those not normally a part of XV.1 and those relating directly to the scope of this Project. Examples of such shall include, but not be limited to reasonable travel, lodging, fees paid on behalf of the School Board when authorized by same, specification and drawing reproductions beyond the first two sets when authorized by the School Board, overtime when authorized by the School Board.
3. Payment for reimbursable expenses shall be at cost, due monthly upon presentation of an invoice. The School Board reserves the right to request proof of such expense before payment.

#### ARTICLE XVI - CONTRACTOR'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services on the Project and for services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on a generally recognized accounting basis and shall be available to the School Board or his authorized representative at mutually convenient times.

#### ARTICLE XVII - AUDITS

The School Board shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the School Board, through its employees, agents, representatives, Contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton.

#### ARTICLE XVIII - MODIFICATION

There may be no modification of this Agreement, except in writing, executed by the authorized representatives of the School Board and Contractor.

#### ARTICLE XIX- SEVERABILITY

If any part, term, or provision of this Agreement, shall be found by the Court to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity or any other provision or portion of the contract document.

#### ARTICLE XX- FOREIGN AND DOMESTIC BUSINESSES-AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH

Contractor whether organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity and shall provide proof thereof. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Agreement. Failure by the Contractor to remain in compliance with the provisions of this section shall be deemed a material breach of this Agreement.

#### REPRESENTATIVES AND NOTICES

Any notice, demand, or request by or made pursuant to this AGREEMENT shall be deemed properly made if personally delivered in writing or sent by the parties in the United States mail, postage paid, to the representative specified below or as otherwise designated in writing and mutually agreed.

The SCHOOL BOARD'S representation shall be (name and title of representative goes here):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The CONTRACTOR'S representation shall be (name and title of representative goes here):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: Lin Whitley  
Deputy Director of Finance  
City of Hampton  
1 Franklin Street, 3<sup>rd</sup> Floor  
Hampton, Virginia 23669

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONTRACTOR and the SCHOOL BOARD.

Hampton City Schools does not discriminate on the basis of race, color, national origin, sex, disability, age or other protected classes in its programs, activities, and employment practices and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handles inquiries regarding the non-discrimination policies: Robbin A. Ruth, Executive Director of Human Resources, One Franklin Street, Hampton, Virginia 23669 757-727-2318

#### ARTICLE XX. SIGNATURE OF PARTIES

As evidence of their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

ATTEST: THE SCHOOL BOARD OF THE CITY OF HAMPTON

\_\_\_\_\_  
City Clerk (Signature) \_\_\_\_\_  
School Superintendent/Authorized Designee

OFFICE OF THE SCHOOL BOARD OF THE CITY OF HAMPTON ATTORNEY  
Approved as to legal form and sufficiency

Date: \_\_\_\_\_

\_\_\_\_\_  
Deputy City Attorney

ATTEST: Company Name

\_\_\_\_\_  
Corporate Secretary/Authorized Agent By: \_\_\_\_\_  
Signature of Corporate Officer

Its: \_\_\_\_\_

STATE OF  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,

2012, by \_\_\_\_\_ Name \_\_\_\_\_ (title) President \_\_\_\_\_, of \_\_\_\_\_ Company Name \_\_\_\_\_, a \_\_\_\_\_ Corporation \_\_\_\_\_ on its behalf. He/She is personally known to me or has produced \_\_\_\_\_ as proper identification.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_ Registration No. \_\_\_\_\_

**Attachment C:**

**MINORITY AND WOMAN-OWNED BUSINESS PROGRAM**

The City of Hampton is implementing new strategies to solicit and utilize minority and woman-owned businesses. To encourage and sustain utilization of minority and woman owned businesses, subcontracting goals have been established for City contracts of \$100,000 and above. The minority and woman-owned subcontracting goals are established by business categories.